

IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SANDRA LOPEZ, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

SEA MAR COMMUNITY HEALTH
CENTERS, a Washington Public Benefit
Corporation,

Defendant.

Case No.

NOTICE OF REMOVAL OF ACTION
UNDER 28 USC § 1346(b)(1)

(Clerk's Action Required)

King County Superior Court
Case No. 21-2-16263-7 SEA

TO: THE CLERK OF THE COURT

AND TO: ALL PARTIES OF RECORD AND THEIR COUNSEL.

PLEASE TAKE NOTICE that Defendant SEA MAR COMMUNITY HEALTH
CENTERS ("Sea Mar"), hereby gives notice of the removal of the above-captioned action, Case
No. 21-2-16263-7 SEA, currently pending in the Superior Court of King County, Washington, to
the United States District Court for the Western District of Washington at Seattle on the grounds
set forth below:

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I. STATE COURT ACTION

The State Court action to be removed, *Sandra Lopez, on behalf of herself and on behalf of all others similarly situated v. Sea Mar Community Health Centers*, was filed in King County Superior Court, State of Washington, on December 13, 2021. A true and correct copy of the Class Action Complaint filed in King County Superior Court Case No: 21-2-16263-7 SEA is attached as **Exhibit A**. This is a civil action arising out of alleged violations of (1) RCW 19.86.101 Washington Consumer Protection Act, and (2) RCW 19.255.010, Washington Data Breach Disclosure Law; as well as allegations of (3) negligence, and (4) breach of implied contract, with claims made by Plaintiffs for compensatory, consequential, actual, nominal, and statutory damages; attorney fees and costs, pre-judgment interest; and equitable and injunctive relief.

II. GROUNDS FOR REMOVAL

The Federally Supported Health Centers Assistance Act allows the United States to deem actors, agencies, and employees to be part of the Public Health Service.

A. Sea Mar is a Deemed Employee of the Federal Government.

Sea Mar is a community-based health care provider that receives funds from the Health Resources & Services Administration. Sea Mar receives government funding because it provides primary care services in underserved areas. Sea Mar is a Federally Qualified Health Center. As such, Sea Mar has been deemed by the Health Resources and Services Administration, in accordance with the Federally Supported Health Centers Assistance Act, to be a Public Health Service employee of the federal government. The relevant deeming notices are attached collectively as **Exhibit B**.

B. The Federal Tort Claims Act, 28 U.S.C. 1346(b) Applies to Plaintiffs' Claims.

The Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b) *et seq.*, provides immunity from suits to Sea Mar because Sea Mar has been deemed to be a Public Health Service employee of the federal government.

Subject to the provisions of chapter 171 of this title, the district courts . . . shall have exclusive jurisdiction of civil actions against

1 the United States . . . for injury or loss of property, or personal
 2 injury or death caused by the negligent or wrongful act or omission
 3 of any employee of the Government while acting within the scope
 4 of his office or employment, under circumstances where the United
 5 States, if a private person, would be liable to the claimant in
 6 accordance with the law of the place where the act or omission
 7 occurred.

8 The regulations establish that the federal government is proper party defendant in an
 9 FTCA suit and not Public Health Service employees like Sea Mar.

10 **C. The Public Health Services Act Applies to Sea Mar.**

11 The Public Health Service Act provides liability protection to Public Health Service
 12 (“PHS”) employees like Sea Mar under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b). Sea
 13 Mar is a PHS employee under the Federally Supported Health Centers Assistance Act, 42 U.S.C.
 14 §§ 233(g)-(n). The *exclusive* remedy for damage for personal injury “resulting from the
 15 performance of medical, surgical, dental, or *related functions*, ...by any commissioned ...
 16 employee of the Public Health Service while acting within the scope of his office or
 17 employment” is *against the United States*. 42 U.S.C. § 233(a). Plaintiffs allege they suffered
 18 personal injuries, including anxiety and emotional distress, as a result of a data breach incident in
 19 the Sea Mar environment. The Federally Supported Health Centers Assistance Act (42 U.S.C. §
 20 233(a)) provides absolute immunity for PHS employees acting within the scope of their
 21 employment. *Hui v. Castaneda*, 559 U.S. 799, 806 (2010).

22 **D. Sea Mar’s Conduct Was Function Required and Related to the Provision of
 23 Medical Care.**

24 To facilitate medical care, Sea Mar—like any doctor’s office—creates medical records,
 25 and collects and maintains personal information from its patients. The maintenance, retention,
 26 and security of patients’ records are legally required and “related functions” to the provision of
 27 medical care within the scope of federal immunity. Plaintiffs’ claims arise from a data breach
 event that allegedly allowed access to patients’ personal identifying information (“PII”) and
 protected health information (“PHI”). Plaintiffs’ alleged injuries therefore undeniably arise out of

1 the “related functions” to medical care—creating and maintaining medical, financial and other
2 personal records of patients and their guarantors. Sea Mar qualifies for immunity, and in an
3 FTCA suit, a plaintiff’s exclusive remedy is to proceed in an action against the United States in
4 district court.

5 **III. TIME FOR REMOVAL**

6 There is no time bar for Notice of Removal under the Federal Tort Claims Act 28 U.S.C.
7 §1346(b)(1) because the district courts have exclusive jurisdiction over actions against the
8 United States for negligent or wrongful acts or omissions committed by government employees.
9 “Subject to the provisions of chapter 171 of this title, the district courts . . . shall have exclusive
10 jurisdiction of civil actions against the United States . . . for injury or loss of property, or
11 personal injury . . .”

12 Pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and the Federally
13 Supported Health Centers Assistance Act, 42 U.S.C. §§ 233(g)-(n) the district court has
14 exclusive jurisdiction over FTCA claims, and in an FTCA suit the only remedy is against the
15 United States.

16 **IV. REQUIRED DOCUMENTS**

17 Defendant Sea Mar will promptly give written notice to all adverse parties. 28 USC §
18 1446(d).

19 In accordance with 28 USC § 1446 and LCR 101 (b)(1), a copy of the operative
20 complaint is attached and filed herewith as **Exhibit A**.

21 Opposing counsel is listed below and is being served with a copy of this Notice as set
22 forth in the Declaration of Service below in accordance with LCR 101(b)(2).

23 WHEREFORE, Defendant Sea Mar gives notice that the court action pending against it
24 in King County Superior Court has been removed from that court to the United States District
25 Court for the Western District of Washington at Seattle.

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1 DATED this 16th day of February, 2022

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DECLARATION OF SERVICE

I hereby certify that on February 16, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record and provided service via electronic mail to:

Julian Hammond, WSBA # 52096 Arie M. Michelsohn, Pro Hac HAMMONDLAW, P.C. 11780 W. Sample Rd., Suite 103 Coral Springs, FL 33065 (310) 601-6766 <i>Attorneys for Plaintiff</i>	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via CM/ECF <input checked="" type="checkbox"/> via E-mail per e-service agreement: jhammond@hammondlawpc.com amichelsohn@hammondlawpc.com pbrandler@hammondlawpc.com adrianbarnes@gmail.com plevi@hammondlawpc.com acherniak@hammondlawpc.com
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I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED February 16, 2022 at Seattle, Washington.

s/Helen Northrop
 Helen Northrop, Legal Secretary
Helen.Northrop@lewisbrisbois.com